IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 264 of 2005

Between:

S.K. Mahaboob Peer, S/o. S.K. Gaibu Sab, Muslim,
R/o. H.No. 6-423, Bellam Mandi Street, Kadapa, Kadapa District.

..... PETITIONER

AND

1 The Deputy Commissioner, Prohibition and Excise Department, Ananthapur, Ananthapur District.
2 The Branch Manager, State Bank of India, Bazaar Branch, Kadapa, Kadapa District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not refunding the maturity amount with interest of the fixed deposit of Rs.52,000/- deposited by the petitioner on 26-07-1995 under receipt No. 409485 with the 2nd respondent bank, though the petitioner was acquitted in C.C.No. 275/97 on the file of the Special Judicial First Class Magistrate for Excise, Chittoor dated 28-02-2003 for offence under Section 8 (b) of A.P. Prohibition Act as illegal, unjust, arbitrary, high handed, dilatory and against Article 300-A of the Constitution of India and consequently direct the respondents to refund the maturity amount with interest of the fixed deposit of Rs.52,000/- deposited by the petitioner on 26-07-1995 under receipt No. 409485 with the 2nd respondent bank to the petitioner.

Counsel for the Petitioner:MR.L.J.VEERA REDDY

Counsel for the Respondent No.1: GP FOR PROHIBITION & EXCISE

Counsel for the Respondent No.2: MR.Deepak Battachargee

The Court at the admission stagemade the following :

ORDER:

The vehicle (Ambassador Car) of the petitioner bearing No.AP 04-B-142 was seized by the Prohibition and Excise Inspector, Chittoor on 07.05.1995, on the allegation that it was used in transporting illicit liquor. Proceedings were initiated before the 1st respondent under the relevant provisions of the A.P.Excise Act (for short 'the Act'). The petitioner states that C.C.No.275 of 1997 registered against him in the Court of Special Judicial First Class Magistrate for Excise, Chittoor, ended in acquittal, through judgment, dated 28.02.2003. The vehicle was released on furnishing a bank guarantee for a sum of Rs.52,000/, during the pendency of proceedings before the 1st respondent. Petitioner complains that in spite of the acquittal in the Criminal Case, the respondents are not releasing the bank guarantee. Necessary directions are sought for in this writ petition.

Heard learned counsel for the petitioner and learned Government Pleader for Excise.

Whenever any violation of the provisions of A.P.Excise Act is noticed, particularly in relation to transport or manufacture of illicit liquor, two sets of proceedings are initiated. The proceedings under the relevant provisions of the A.P.Excise Act are initiated before the Deputy Commissioner of Excise, which mostly relates to the confiscation of the seized material etc. As a parallel measure, prosecution is launched before the concerned Criminal Court also.

In this case, proceedings were initiated before the 1st respondent under the relevant provisions of the Act and C.C.No.275 of 1997 was registered in the Court of Special Judicial First Class Magistrate, Chittoor. It is true that the Criminal Case ended in acquittal of the petitioner. However, it emerged that in the proceedings initiated before the 1st respondent, a show cause notice, dated 08.08.1995, was issued to the petitioner and thereafter an order, dated 27.01.1997 was passed directing

confiscation of the seized vehicle. The copy of the order is said to have been served on the petitioner on 10.02.1997.

The interim custody of the vehicle was given to the petitioner on 16.11.1995 by the 1st respondent on furnishing the bank guarantee. Once the vehicle was confiscated, the question of releasing bank guarantee to the petitioner does not arise. If the petitioner feels aggrieved by the order of confiscation, he has to prosecute the remedy of appeal under the Act.

Hence, the writ petition is dismissed, leaving it open to the petitioner to work out his remedies. The petitioner states that he has not been served with the copy of the order of confiscation dated 27.01.1997. If that be so, he can make an application to the 1st respondent, who, in turn, shall furnish the same on usual terms. There shall be no order as to costs.

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08.02.2005

Jsu

To

1 The Deputy Commissioner, Prohibition and Excise Department, Ananthapur, Ananthapur District.
2 The Branch Manager, State Bank of India, Bazaar Branch, Kadapa, Kadapa District.

3 Two C.Cs to the G.P for Prohibition and Excise, High Court Buildings, Hyderabad (OUT).

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